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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LT. JOSEPH J. GALASKA,
GEORGE W. WOOLLEY,
TAMMY S. WOOLLEY,
MICHAEL G. PEKEL,
ANTHONY LOOK, JR.,
KIMBERLY LOOK, GRACHIAN
L. SMITH, MARY JANE SMITH,
ALEJANDRO MARCEY, and
FELICIA MARCEY, individually
and on behalf of all others
similarly situated,

Plaintiffs,

v.

Case No.: 3:17-cv-01258-LB

CLASS ACTION

- 1. VIOLATION OF THE “UNFAIR” PRONG OF CAL. BUS. & PROF. CODE § 17200, *et seq.* AGAINST YGRENE ENERGY FUND, INC.;**
- 2. VIOLATION OF THE “FRAUDULENT” PRONG OF CAL. BUS. & PROF. CODE § 17200, *et seq.* AGAINST YGRENE ENERGY FUND, INC.;**
- 3. VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT;**
- 4. VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT;**
- 5. TORTIOUS INTERFERENCE WITH CONTRACT;**
- 6. FRAUDULENT INDUCEMENT;**

1 YGRENE ENERGY FUND, INC.;
2 YGRENE ENERGY FUND
3 FLORIDA, LLC; and DOES 1
through 10, inclusive,

4 Defendants.

7. **NEGLIGENT
MISREPRESENTATION;
8. UNJUST ENRICHMENT; and
9. NEGLIGENCE.**

DEMAND FOR JURY TRIAL

6
7 **AMENDED COMPLAINT FOR DAMAGES**

8 Plaintiffs, Lt. Joseph J. Galaska, George W. Woolley, Tammy S. Woolley,
9 Michael G. Pikel, Anthony Look, Jr., Kimberly Look, Grachian L. Smith, Mary
10 Jane Smith, Alejandro Marcey, and Felicia Marcey, individually and on behalf of
11 all others similarly situated, hereby sue Ygrene Energy Fund, Inc. and Ygrene
12 Energy Fund Florida, LLC (“Ygrene” or “Defendants”), and state and allege as
13 follows on information and belief:

14 **THE PARTIES**

- 15 1. Plaintiff, Lt. Joseph J. Galaska, is a resident of Broward County,
16 Florida.
- 17 2. Plaintiff, George W. Woolley, is a resident of Broward County,
18 Florida.
- 19 3. Plaintiff, Tammy S. Woolley, is a resident of Broward County,
20 Florida.
- 21 4. Plaintiff, Michael G. Pikel, is a resident of Miami-Dade County,
22 Florida.
- 23 5. Plaintiff, Anthony Look, Jr., is a resident of Sacramento County,
24 California.
- 25 6. Plaintiff, Kimberly Look, is a resident of Sacramento County,
26 California.
- 27 7. Plaintiff, Grachian L. Smith, is a resident of Broward County, Florida.
- 28 8. Plaintiff, Mary Jane Smith, is a resident of Broward County, Florida.

1 exceeds the \$5,000,000.00 (five-million dollars) threshold for federal court
2 jurisdiction under the Class Action Fairness Act (“CAFA”). Therefore, both the
3 elements of diversity jurisdiction and CAFA jurisdiction are present.

4 16. Venue is proper in this Court pursuant to California Code of Civil
5 Procedure section 393 because some portion of the causes of action arose in this
6 County and pursuant to Civil Local Rule 3-2(c) because a substantial part of the
7 events or omissions giving rise to the claims herein alleged occurred in Sonoma
8 County, California. Defendants further provide and market their products and
9 services within this district, thereby establishing sufficient contact to subject them
10 to personal jurisdiction.

11 17. At all relevant times, Ygrene Energy Fund, Inc. and Ygrene Energy
12 Fund Florida, LLC were directly engaged in the business of marketing and
13 facilitating PACE loans that are the subject of this Complaint throughout the United
14 States and the State of California.

15 18. This Court has personal jurisdiction over Defendants. Facts giving rise
16 to this action occurred in the State of California. Defendants have been afforded due
17 process because they have, at all times relevant to this matter, individually or
18 through their agents, subsidiaries, officers and/or representatives, operated,
19 conducted, engaged in and carried on a business venture in this State, and/or
20 maintained an office or agency in this State, and/or provided services, committed a
21 statutory violation within this State related to the allegations made herein, and
22 caused injuries to Plaintiffs and Class Members, which arose out of the acts and
23 omissions that occurred in the State of California, during the relevant time period, at
24 which time Defendants were engaged in business activities in the State of
25 California, resulting in injuries to Plaintiffs and Class Members.

26 **NATURE OF THE ACTION**

27 19. This lawsuit seeks to protect consumers from (a) Ygrene’s deceptive
28 sales practices, in which it enlists ill-trained and self-interested home improvement

1 contractors to sell its Property Assessed Clean Energy (“PACE”) loans to
 2 homeowners, luring consumers into a major financial obligation without proper
 3 disclosures befitting such a momentous commitment; and (b) Ygrene’s
 4 misrepresentations, non-disclosures, omissions, and fraudulent concealment of
 5 material information relating to its PACE loans, including those regarding the
 6 likelihood of prepayment and inability to transfer PACE loans, prepayment
 7 penalties, fees assessed by Ygrene to avoid such prepayment penalties, and
 8 Ygrene’s unreasonable administrative fees.

9 20. PACE loans are a financing structure by which residential property
 10 owners are permitted to opt into a special assessment district to receive financing
 11 for energy improvements and retrofits on their homes. The loans are repaid through
 12 an annual assessment on the owner’s property tax bill. A lien in the amount of the
 13 loan is placed on the home. Ygrene aggressively markets PACE loans through
 14 various print, Internet, and radio materials, as well as a network of 3,200 home
 15 improvement contractors. It provides little and/or inaccurate training to these
 16 individuals before they are set loose on unsuspecting consumers.

17 21. The training materials Ygrene provides to its improvement contractors
 18 contain misleading and incorrect statements about Ygrene’s PACE loans that are
 19 then passed on to consumers. Such statement include, but are not limited to, the
 20 following:

21 **Ways that Ygrene’s program is superior to other**
 22 **PACE providers. HERO and CalFirst work under an**
 23 **Assessment model [...]** This creates problems for some
 24 homeowners when they sell or refinance their homes.
 25 Some buyers/lenders are asking that the Assessment be
 26 paid off, rather than transferring to the new owner...

27 **Ygrene’s program does NOT use Assessment –**
 28 **Ygrene’s model uses Mello-Roos special taxes. [...]**
 Over \$20B in Mello-Roos special taxes have been placed
 on over 1.3M homes over the last 20 years without any
 problems. None have required payoff at time of sale or

1 refinance. [...] Ygrene's pre-payment rate is only 1.2% -
 2 Evidence that Ygrene customers are having a positive
 3 experience.

4 22. Once these contractors receive their Ygrene "certification," the
 5 directive from Ygrene is clear: **"BOOST YOUR BOTTOM LINE."**¹

6 23. And this is precisely what this rag-tag group of de facto loan agents set
 7 out to do, by routinely misrepresenting the true nature of the PACE loans they sell
 8 to consumers so they can maximize their own profits.

9 24. Through this sales force, its employees and agents, its marketing, and
 10 written disclosures, Ygrene deceives consumers into believing the PACE loan is a
 11 risk-free, no-strings-attached program, backed by government support that allows
 12 immediate energy efficiency improvements to a home in exchange for nothing more
 13 than increased property tax assessments. In reality, the loans are burdensome
 14 encumbrances on consumers' homes.

15 25. As part of its sales efforts, Ygrene markets its PACE loans as the
 16 "smart alternative to traditional credit-based financing,"² or in other words, as an
 17 alternative to a Home Equity Line of Credit ("HELOC"). According to Ygrene, its
 18 PACE loans are a "smart alternative" to traditional loan products because their
 19 loans are actually tax assessments that transfer with the property to the next owner
 20 of the home—meaning a property owner can leave the loan behind when he/she
 21 sells the home, or refinance the home without disturbing the PACE loan.
 22 Necessarily, then, these representations indicate to reasonable consumers that
 23 prepayment penalties are not charged at the time of sale or refinance—because the
 24 PACE loan remains undisturbed.

25 26. Ygrene is at pains to distinguish its PACE loans from credit vehicles
 26 assigned to a specific borrower. In fact, in marketing materials, Ygrene goes so far

27 ¹https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjK8OvH1aPSAhXL8CYKHR0jDTkQFgg0MAE&url=https%3A%2F%2Fygreneworks.com%2Fwp-content%2Fuploads%2F40004-CA-8-15_prf51.pdf&usg=AFQjCNG6WiO-ZMmBy88YrSihwC_TS3E9KQ; (last accessed on February 22, 2017).

28 ² <https://ygreneworks.com/homeowners/>; (last accessed on February 15, 2017).

as to say: **“It’s as if your house is borrowing the money.”** Again, in such a circumstance, no prepayment penalty would ensue.

27. Contrary to Ygrene’s misrepresentations, however, the PACE loans it markets to consumers do **not** travel with the home—in fact, they make it impossible or nearly impossible for consumers to sell their homes without first paying off the loan and incurring a large prepayment penalty. This is because conventional lenders refuse to provide loans on properties encumbered by Ygrene’s PACE loans, which benefit from superpriority status.

28. In other words, Ygrene’s PACE loans are not an encumbrance that run with the property; they are an encumbrance that acts exactly like a HELOC.

29. The misperception that PACE loans run with the property has been actively fostered by Ygrene, and it is widespread. For example, a recent article in the Huffington Post titled *Will PACE Loans Cause the Next Housing Crisis?*, incorrectly stated: “Because the loan is attached to the property, the loan obligations (and any liens) are transferred to any future buyer.”³

30. In fact, Ygrene’s PACE “loan obligations” are *not* transferred to future buyers. Indeed, rules issued by the federal government make clear this may not occur. At all times relevant, Ygrene was fully aware that the Federal Housing Finance Agency (“FHFA”), on at least three occasions since 2010, “has made clear that...Fannie Mae and Freddie Mac should neither purchase nor refinance mortgages with PACE loans attached.”⁴

31. The FHFA’s directive to Fannie Mae and Freddie Mac is crucial because conventional lenders and the housing market act in concert with the FHFA’s PACE financing prohibitions since virtually all lenders rely on Fannie Mae and Freddie Mac to purchase the loans that they make to borrowers. This means that

³ http://www.huffingtonpost.com/entry/will-pace-loans-cause-the-next-housing-crisis_us_589db386e4b0e172783a9ae9; (February 12, 2017).

⁴ <http://www.fhfa.gov/Media/PublicAffairs/Pages/Pollard-Statement-before-California-Legislature-Keeping-Up-with-PACE.aspx>; (last accessed on January 30, 2017).

1 individuals looking to purchase a home encumbered by a PACE lien will effectively
2 not be able to secure conventional financing for the purchase unless the
3 homeowners first pay off the PACE loan in its entirety—*and* pay a massive
4 prepayment penalty to Ygrene, as well as various unreasonable administrative fees.

5 32. Indeed, satisfaction of Ygrene’s PACE loans is certain at the time of
6 sale or refinance because no conventional lender will agree to a loan on a property
7 encumbered by a superpriority lien.

8 33. Against this backdrop of deceptive marketing, Ygrene also issues
9 deceptive, misleading, and incomplete written disclosures. As discussed herein,
10 those disclosures mislead consumers regarding: (1) the necessity of paying off
11 PACE loans at sale or refinancing; (2) the necessity of paying large prepayment
12 penalties at sale or refinancing; and (3) unreasonable “administrative fees” and
13 “payoff statement fees” associated with sale or refinancing. In other words, Ygrene
14 not only misrepresents the *certainty* of a pay-off in both its representations and
15 disclosures, but it also misrepresents the huge financial *impact* of being forced to
16 pay off a PACE loan early.

17 34. In recent years, Ygrene has surreptitiously added a fee to the closing
18 costs of certain consumers styled a “Pre-Payment Waiver Fee.” It provides no
19 explanation in the body of loan documents what the “fee” is attributable to, or what
20 it covers. Upon information and belief, the fee is a belated, halfhearted attempt by
21 Ygrene to acknowledge what FHFA has made clear all along: full satisfaction of the
22 loan is required at sale or refinance, and a prepayment penalty will certainly be
23 charged at that time. Rather than remove the prepayment penalty, which its loan
24 documents and marketing materials continue to represent as a near-impossibility,
25 Ygrene has added this new fee to allow homeowners to avoid paying a prepayment
26 penalty that Ygrene’s marketing representations and loan documents indicated
27 would never be charged in the first place. In other words, the fee allows Ygrene to
28 profit further from its own misrepresentations.

1 35. Consumers like Plaintiffs would not have obtained PACE loans had
 2 they known the loans would require a prepayment penalty and full satisfaction of
 3 the loan at the time of sale or refinance. Moreover, reasonable consumers would not
 4 have knowingly agreed to enter into the loans with a Pre-Payment Waiver Fee,
 5 when marketing materials and sales practices indicated to them that a prepayment
 6 was impossible or unlikely to occur.

7 36. Since the filing of this lawsuit, Senators Tom Cotton (R-Arkansas),
 8 Marco Rubio (R-Florida), and John Boozman (R-Arkansas) have introduced the
 9 Protect Americans from Credit Exploitation Act (PACE Act). The Act “requires
 10 disclosure for Property Assessed Clean Energy (PACE) loans that target low-
 11 income and elderly Americans with predatory home loans.”⁵

12 37. As Senator Cotton observed:

13 Residential PACE loans are a scam. Predatory green-
 14 energy lenders are changing state and local laws to trick
 15 seniors into taking out high-interest rate loans for 20 years,
 16 along with liens on their homes, for technology that could
 17 be obsolete in a few years. Today, these loans are exempt
 18 from the same disclosure forms required for other home
 19 loans. Our bill will fix this. Requiring disclosure will
 reduce the advantage that PACE loan sharks have over
 hard-working Americans. It’s just the accountability we
 need.

20 38. This action is based upon a common nucleus of operative facts. All of
 21 Ygrene’s unfair, deceptive and wrongful conduct in this case arise directly from the
 22 material omissions and deceptive representations made directly by Ygrene and its
 23 agents to Plaintiffs and members of the class, as well as documents prepared and
 24 provided by Ygrene to Plaintiffs and members of the class.

25 39. As a result of Ygrene’s intentional misconduct, Plaintiffs and members
 26 of the class ask this Court to award injunctive relief, damages, including damages
 27 which flow naturally from the requested injunctive relief, and attorney’s fees
 28

⁵ https://www.cotton.senate.gov/?p=press_release&id=653; (last accessed on May 10, 2017).

1 against Ygrene.

2 GENERAL FACTUAL ALLEGATIONS

3 PACE Loans

4 40. PACE loans are a financing structure by which residential property
5 owners are permitted to opt into a special assessment district to receive financing
6 for energy improvements and retrofits on their homes. The loans are repaid through
7 an annual assessment on the property owner's property tax bill.

8 41. PACE loans range in size from \$5,000 to more than \$100,000, with an
9 average of approximately \$25,000, and charge interest rates of 7% to 10% over a
10 repayment period of five to 25 years.

11 42. Municipal revenue bonds secured by liens on participating properties
12 are the primary financing instrument for PACE programs. PACE bonds can be
13 issued either through a private placement or public issuance. The proceeds from the
14 bonds provide funding for home improvement projects that meet program terms and
15 conditions.

16 43. PACE loans first originated in California in 2008 with great
17 momentum, but slowed in 2010 due to concerns raised by the FHFA, Fannie Mae,
18 and Freddie Mac regarding the seniority of the PACE lien over mortgages.

19 44. In Florida, legal challenges to several PACE bond validation
20 proceedings initially slowed the implementation of PACE lending. However, in a
21 recent opinion, the Florida Supreme Court affirmed a circuit court's final judgment
22 validating a special assessment revenue bond to fund PACE loans. *See Florida*
23 *Bankers Ass'n v. Florida Development Finance Corp.*, 176 So.3d 1258, 1260 (Fla.
24 2015).

25 45. To date, almost **\$3.4 billion** worth of PACE loans have been issued
26 around the country.

27 46. PACE loans are marketed with deceptive, incomplete information, and
28 are often pitched by construction and remodeling companies with no expertise in

1 consumer finance issues and who Ygrene provides the same deceptive and
2 incomplete information to pass along to the consumer.

3 47. In a recent article titled *America's Fastest-Growing Loan Category has*
4 *Eerie Echoes of Subprime Crisis*, the Wall Street Journal described just a portion of
5 the problem as follows:

6 As the loans spread, so do problems that echo the subprime
7 mortgage crisis. Plumbers and repairmen essentially
8 function as loan brokers but have scant training and
9 oversight. They often pitch PACE loans to help land
10 contracting jobs and earn referral fees from
11 lenders....Creditworthiness matters little to lenders,
12 because loans are based on the value of a homeowner's
property. PACE loans typically require no down payment,
and the debt is added to property-tax bills as an
assessment.⁶

13 48. Typically, private companies such as Ygrene serve as program
14 administrators and intermediaries between the special districts and borrowers. A
15 company such as Ygrene will market to homeowners, prepare loan applications and
16 documents, conduct the "closing" on loans, and facilitate the funding of individual
17 homeowner projects.

18 49. Companies like Ygrene market PACE loans to borrowers as a better
19 alternative to private loans such as home equity lines of credit. In reality, however,
20 as Professor Prentiss Cox⁷ notes, PACE loans are nothing more than mortgage
21 loans with a different name:

22 PACE financing has all the characteristics of a mortgage
23 loan other than the mechanism of billing and payment
24 through property tax. Unlike a public works tax
25 assessment, PACE financing is voluntarily assumed by the
26 homeowner and provides cash to the homeowner for
improvements that ultimately will be owned by the

27 ⁶ <https://www.yahoo.com/news/america-fastest-growing-loan-category-063033906.html>; (last accessed on January
30, 2017).

28 ⁷ Prentiss Cox is a professor at the University of Minnesota Law School.

homeowner. From the lender's perspective, PACE financing constitutes another lien on the property for purposes of evaluating the value of the home as security in case of default by the homeowner on the mortgage loan.⁸

The FHFA's Rules Regarding PACE Loans

50. The FHFA is the federal regulator and conservator of the secondary mortgage market Government Sponsored Enterprises, Fannie Mae and Freddie Mac (GSEs).

51. GSEs purchase mortgages from loan originators and use them to issue mortgage backed securities. Combined, the GSEs hold more than \$5 trillion worth of mortgages; over half of the Nation's single-family mortgage debt.

52. Because of their market dominance, the GSEs' lending policies carry significant weight and are closely followed by mortgage loan originators. This is because originators rely on the GSEs to purchase the loans that the originators have made to borrowers.

53. Consequently, the "housing market has acted in concert with the Federal Housing Finance Agency's PACE financing prohibitions for Fannie Mae and Freddie Mac."⁹

54. On July 6, 2010, FHFA issued its first statement and position on PACE loans. The FHFA expressed grave concerns about PACE loans, stating that such loans

... present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks... First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax

⁸ Prentiss Cox, *Keeping Pace?: The Case Against Property Assessed Clean Energy Financing Programs*, 83 Col. L. REV. 106 (2011).

⁹ [http://mba.informz.net/MBA/data/images/MBA Summary of FHA PACE Bulletin Final.pdf](http://mba.informz.net/MBA/data/images/MBA%20Summary%20of%20FHA%20PACE%20Bulletin%20Final.pdf); (last accessed on January 31, 2017).

1 programs and do not have the traditional community
2 benefits associated with taxing initiatives.

3 *

*

*

4 FHFA urged state and local governments to reconsider
5 these programs and continues to call for a pause in such
6 programs so concerns can be addressed. First liens for
7 such loans represent a key alteration of traditional
8 mortgage lending practice. They present significant risk to
9 lenders and secondary market entities, may alter
10 valuations for mortgage-backed securities and are not
essential for successful programs to spur energy
conservation.¹⁰

11 55. On August 31, 2010, Freddie Mac and Fannie Mae each issued letters
12 to lenders stating that the Enterprises would cease purchasing mortgage loans
13 secured by a property with an outstanding PACE loan, originating on or after July
14 6, 2010, with first-lien priority. Additionally, the GSEs stated that in order to
15 refinance a PACE-encumbered property, owners must pay off the entire outstanding
16 PACE loan.

17 56. On February 28, 2011, the FHFA sent a letter to the GSEs' general
18 counsels invoking its statutory authority as conservator under 12 U.S.C. § 4617, as
19 well as its duty to preserve and conserve the GSEs' assets, and directed the GSEs to
20 "continue to refrain from purchasing mortgage loans secured by properties with
21 outstanding first-lien PACE obligations and carefully monitor through their seller-
22 servicers any programs that create such first-lien obligations."

23 57. On March 19, 2013, the Ninth Circuit Court of Appeals vacated a
24 district court order and dismissed a lawsuit brought by several California counties
25 and cities which sought to challenge the FHFA's directive to the GSEs, holding that
26 "FHFA's decision to cease purchasing mortgages on PACE-encumbered properties
27

28 ¹⁰ <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>; (last accessed on January 30, 2017).

1 is a lawful exercise of its statutory authority as conservator of the Enterprises.”
 2 *County of Sonoma v. Federal Housing Finance Agency*, 710 F.3d 987, 988 (9th Cir.
 3 2013).

4 58. On December 22, 2014, the FHFA issued a second statement regarding
 5 PACE loans:

6 In issuing this statement, FHFA wants to make clear to
 7 homeowners, lenders, other financial institutions, state
 8 officials, and the public that Fannie Mae and Freddie
 9 Mac’s policies prohibit the purchase of a mortgage where
 10 the property has a first-lien PACE loan attached to it. This
 11 restriction has two potential implications for
 12 borrowers. First, a homeowner with a first-lien PACE loan
 13 cannot refinance their existing mortgage with a Fannie
 14 Mae or Freddie Mac mortgage. Second, anyone wanting
 15 to buy a home that already has a first-lien PACE loan
 cannot use a Fannie Mae or Freddie Mac loan for the
 purchase. These restrictions may reduce the marketability
 of the house or require the homeowner to pay off the
 PACE loan before selling the house.¹¹

16 59. On June 9, 2016, Alfred M. Pollard, General Counsel for the FHFA,
 17 once again reiterated the FHFA’s directive that “Fannie Mae and Freddie Mac
 18 should neither purchase nor refinance mortgages with PACE loans attached.” Mr.
 19 Pollard further stated:

20 [A] PACE lien often represents a retroactive creation of
 21 liability on a property ahead of the existing first-lien
 22 mortgage, which the mortgage holder neither knows about
 23 nor consents to. The creation of a super-lien thus transfers
 24 the risk of loss to the first-lien mortgage holder after the
 25 lender has already underwritten and entered into a
 26 financing arrangement that facilitates the purchase or
 refinancing of a home. The lender has no knowledge and
 no say in the subsequent additional risk and the potential
 decline in the value of their collateral by the layering of

27
 28 ¹¹ <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx>; (last accessed on January 30, 2017).

debt.¹²

60. Upon information and belief, at all times relevant, Ygrene had knowledge of the above statements and the FHFA's rules that directly impact Ygrene borrowers' ability to sell their homes.

61. As a result of FHFA's position regarding Ygrene's PACE loans, Ygrene was on notice that Ygrene's consumers are certain to be forced to satisfy their PACE loans before being able to sell their homes.

PACE Loans in California

62. As a result of the FHFA's position, PACE loan borrowers have been unable to sell their homes without first satisfying their PACE loans.

63. In 2008, California passed the first legislation in the country permitting PACE lending. Since that time, over 70,000 homeowners have borrowed money through companies such as Ygrene.

64. After years of PACE lending in California, homeowners who are now attempting to sell their homes are experiencing first-hand the realities of PACE loans issued by companies such as Ygrene.

65. On October 19, 2015, a Reuters article titled *Green Financing has Hobbled Home Sales in California* reported that "a growing number of homeowners, lenders and realtors in California suggest the financing is making homes more difficult to sell and disrupting the mortgage market."¹³ The article went on to discuss the realities faced by homeowners and how they were ultimately forced to prepay their PACE loans before they could sell their homes.

66. On November 6, 2015, The Wall Street Journal published an article titled *Clean-Energy Loans Make for Messy Home Sales*, which discussed the lack of disclosures and difficulties faced by PACE loan borrowers attempting to refinance

¹² <http://www.fhfa.gov/Media/PublicAffairs/Pages/Pollard-Statement-before-California-Legislature-Keeping-Up-with-PACE.aspx>; (last accessed on January 30, 2017).

¹³ <http://mobile.reuters.com/article/idUSKCN0SD0DP20151019>; (last accessed on July 20, 2016).

1 or sell their homes.¹⁴

2 67. On April 25, 2016, U.S. Congressman Brad Sherman wrote a letter to
 3 the Director of the Consumer Financial Protection Bureau, requesting that the
 4 CFPB commence “a proper investigation and examination of potential consumer
 5 abuses associated with PACE loans.” In his letter, Congressman Sherman noted the
 6 various pitfalls consumers have experienced in California, including the fact that
 7 “the Federal Housing Finance Agency does not accept purchases of loans with
 8 priority lien status attached to it, limiting the consumer’s ability to receive
 9 refinancing or eventually sell the property unless the PACE loan is paid off in its
 10 entirety.”¹⁵

11 68. On June 25, 2016, the Daily Democrat published a story by California
 12 Assembly Member Matt Dababneh titled *Cost of Going Green Must not be Hidden*
 13 *From Homeowner*, which described the consequences of the unregulated PACE
 14 lending market in California:

15 There is no requirement for basic disclosures, and
 16 homeowners are often led to believe PACE is a subsidized
 17 government program that carries no risk if they need to sell
 18 or refinance their homes...The prospect of going green,
 19 coupled with a misleading sales pitch, is leading
 20 homeowners, many of them seniors, to get scammed and
 21 become victims of predatory lending because they have no
 22 idea what financial product they are really buying.
 Homeowners are also often unaware that a PACE loan
 adds a lien to their property, which means they might not
 be able to sell or refinance their homes if the PACE loans
 aren’t paid off.¹⁶

23 69. Most recently, on July 19, 2016, Pete Mills, Senior Vice President of
 24

25 ¹⁴ <http://www.wsj.com/articles/clean-energy-loans-make-for-messy-home-sales-1446853426>; (last accessed on July
 20, 2016).

26 ¹⁵ [http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-
 27 Blog/Rep--Sherman-Requests-CFPB-Review-of-Property-Tax-Assessed-Clean-Energy-\(PACE\)-programs/](http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-Blog/Rep--Sherman-Requests-CFPB-Review-of-Property-Tax-Assessed-Clean-Energy-(PACE)-programs/); (last
 accessed on July 20, 2016).

28 ¹⁶ <http://www.dailydemocrat.com/article/NI/20160625/LOCAL1/160629921>; (last accessed on July 20, 2016).

1 Residential Policy and Member Engagement for the Mortgage Bankers Association,
 2 issued the following statement regarding the MBA's position on PACE loans:

3 MBA and its members believe that energy efficient home
 4 improvements provide homeowners with a wide variety of
 5 benefits, and want to help homeowners safely and
 6 sustainably finance these kinds of
 7 improvements. However, we are concerned that this
 8 program, as designed, would leave low and moderate
 9 income FHA borrowers more vulnerable to being misled
 10 and steered into financial obligations that they may not
 11 fully understand due to lack of disclosure.¹⁷

12 70. The consequences that borrowers in California have faced in being
 13 unable to sell their homes were, at all times relevant, known to Ygrene.
 14 Notwithstanding the damages Ygrene has caused to thousands of consumers in
 15 California, Ygrene continues to engage in these deceptive practices.

16 **PACE Loans in Florida**

17 71. On April 30, 2010, the Florida Legislature passed Florida Statute
 18 section 163.08 (the "Act") which (1) authorizes local governments to levy non-ad
 19 valorem assessments to fund qualifying energy conservation and efficiency,
 20 renewable energy and wind resistance improvements to real property; (2) authorizes
 21 property owners to apply for funding and voluntarily enter into financing
 22 agreements with local governments to finance a qualifying improvement; and (3)
 23 authorizes local governments to collect moneys, with specific collection
 24 requirements, for such purposes through non-ad valorem assessments.

25 72. Under the Act, local governments are permitted to incur debt and
 26 partner with other local governments to provide financing to property owners for
 27 qualifying improvements.

28 73. In order to qualify for a PACE loan in Florida, a property owner must
 be current on his or her property taxes, as well as his or her mortgage payments,

¹⁷ <https://www.mba.org/2016-press-releases/july/mba-statement-on-pace-program>; (last accessed on July 20, 2016).

1 cannot have involuntary liens on the property, and cannot have recorded property-
2 based debt delinquency. § 163.08(9), Fla. Stat.

3 74. PACE loans give no consideration to the existing loan-to-ratio value. §
4 168.08(12)(a), Fla. Stat. A property owner may borrow up to 20% of the just
5 valuation of his or her property without any statutory regard for whether the
6 property owner has equivalent equity in the property. § 163.08(12)(a), Fla. Stat.

7 75. Furthermore, the purchase money mortgagee cannot protect against
8 diminution in its collateral value by accelerating its loan because the Act prohibits
9 such acceleration if the acceleration is done solely as a result of the property owner
10 obtaining a PACE loan. § 163.08(13), Fla. Stat.

11 76. There is no Florida PACE administrator because there is no state
12 program. All of the PACE programs within Florida are formed “by local
13 governments to operate for local governments” and operate pursuant to F.S.
14 §163.01 interlocal agreements, with the exception of St. Lucie and Leon counties,
15 which operate within their own counties.

16 77. All PACE programs in Florida are operated by a third-party
17 administrator such as Ygrene. There are presently five (5) PACE programs
18 operating in Florida. Ygrene serves as the administrator for two (2) of the programs
19 and has facilitated funding for 90% of all PACE projects in Florida.

20 78. The largest program administered by Ygrene is The Green Corridor
21 District, which consists of 20 local governments in Miami-Dade and Broward
22 Counties. The Green Corridor District includes both residential and commercial
23 properties. The Green Corridor District has authorized \$500,000,000.00 of revenue
24 bonds to fund the program. Since its inception, the program has financed
25 approximately \$129 million in qualifying improvements. The majority of these
26 improvements have been to residential property with an average residential project
27 size of \$22,000.00.
28

Ygrene's Business Model

79. Ygrene is the nation's leading, multi-state provider of residential and commercial property assessed clean energy financing. Nationwide, Ygrene has approved more than \$1 billion in applications and has completed over \$394 million in contracts.

80. Ygrene's PACE loans are no different than private loans except that the terms are less favorable when compared to conventional loans, and instead of a monthly billing statement, borrowers receive an annual tax assessment.

81. Ygrene acts as a lender by using private capital to provide financing to property owners in the PACE districts it administers. Ygrene's capital sources and structure include a \$100 million revolving line of credit for the initial funding of PACE loans.

82. Funding for a specific project is accomplished by the special PACE district's (e.g. The Green Corridor) issuing revenue bonds secured by special tax liens. The revenue bond is used as the financial instrument to allow the flow of private capital from Ygrene to home improvement projects. As part of the agreement between the district and Ygrene, the district sells and assigns all of its rights to receive the special tax revenues to Ygrene.

83. More specifically, the district issues a revenue bond to fund the PACE program. The bond is privately placed with Ygrene and issued as a single drawdown bond. Ygrene funds the purchase price of the bond by making advances. Each advance is considered a "sub-series bond" of the drawdown bond.

84. The drawdown bond is in the form of a revolving line of credit, allowing for the repayments of amounts drawn and the re-borrowing of such repaid amounts. Each advance is secured by a Financing Agreement and a senior priority assessment lien on the property.

85. Each individual property owner within the district desiring to finance an energy improvement enters into a Financing Agreement with the district under

1 which the property owner agrees to the district's imposition of a non-ad valorem
2 assessment on the property.

3 86. Each sub-series bond is secured solely by its own collateral, consisting
4 of the Financing Agreement (evidencing the assessment lien) and a revenue
5 account.

6 87. When it holds a sufficient amount of sub-series bonds, Ygrene
7 securitizes the bonds and sells them to private investors. In other words, the loans
8 made to property owners are bundled and sold to investors with a transfer of rights
9 to the PACE loan revenue stream as a security.

10 88. On July 23, 2015, Ygrene announced the completion of a **\$150 million**
11 private securitization transaction. The transaction combined both residential and
12 commercial asset revenue streams, combined projects in all of the states where
13 Ygrene operates, and included both special taxes and assessments in a single
14 securitization.

15 89. On November 15, 2016, Ygrene announced the completion of another
16 bond in the amount of **\$184 million**.

17 90. Most recently, on April 24, 2017, Ygrene announced the completion of
18 another bond in the amount of **\$176 million**.

19 91. In order to maximize profits for itself and its investors, Ygrene offers
20 loan terms that are much less favorable than conventional loan products overall.

21 92. Ygrene offers its borrowers repayment terms of 5, 10, or 20 years. In
22 the event of prepayment, Ygrene charges borrowers a fee of 3% to 5% of the
23 remaining balance of the loan.

24 93. The prepayment penalty that Ygrene charges consumers is for its own
25 benefit and to make its bonds more attractive to investors, who prefer loans with
26 pre-payment penalties because these penalties reduce the speed at which loans are
27 repaid, allowing the investors to earn the full potential of their investment.
28

1 94. On average, Ygrene charges \$4,000.00¹⁸ in various fees, including an
 2 application fee; processing and underwriting fee; miscellaneous county costs;
 3 record and disbursement fees; escrow and title insurance; a closing fee; capitalized
 4 interest, and, in some instances, a pre-payment waiver fee.

5 95. Ygrene also charges borrowers excessive interest rates of 7% to 12%,
 6 which is considerably higher than a standard equity line of credit, which have
 7 averaged between 4% and 5% over the past five (5) years. As recently observed by
 8 the Director of the FHFA during a Congressional oversight hearing on PACE loans:
 9 “There is no rational reason, if you think about it, why a superior tax lien would be
 10 having an interest rate of 10, 11, or 12 percent when a lien subordinate to it is going
 11 at 4 percent or 5 percent.”

12 96. With the exception of the application fee, all fees are included in the
 13 loan and are subtracted from the disbursement amount at the time of closing.

14 97. In addition to supplying private capital, Ygrene is also responsible for
 15 managing the PACE program district, establishing a budget, and funding program
 16 operations.

17 98. As part of its services, Ygrene provides program design, marketing,
 18 administrative duties, origination, application processing, and ongoing reporting
 19 services.

20 99. Marketing the program includes multiple modes of advertisement,
 21 including web-based, mail campaigns, television, radio and print ads, and outreach
 22 to the building and installation community, including training materials.
 23 Additionally, educational seminars are conducted for County residents.

24 100. Most importantly, Ygrene is solely responsible for developing loan
 25 documents and disclosures that are provided to consumers.

26 **Ygrene’s Deceptive Business Practices Have Damaged Consumers**

27 101. Ygrene uses a network of over 3,200 home contractors to drum up
 28

¹⁸ Based on a \$35,000.00 principal loan at 20 years.

1 business.

2 102. These contractors act as de facto mortgage brokers and are often the
3 primary point of contact between Ygrene and its borrowers.

4 103. Ygrene provides little and inaccurate training to these contractors,
5 whose primary incentive it is to sign up additional homeowners, collect Ygrene's
6 referral fee for doing so, and ultimately charge unusually high costs for the energy-
7 efficiency improvement work. The result is unregulated lending with unqualified
8 and self-interested contractors acting as mortgage brokers.

9 104. These de facto loan agents routinely and systematically misrepresent
10 the characteristics of Ygrene PACE loans, often under Ygrene's instruction and
11 based on Ygrene's misinformation.

12 105. Through its deceptive marketing, Ygrene leads consumers to believe
13 that its PACE loans are a government subsidized program that carries no risk if they
14 need to sell their homes or refinance a mortgage.

15 106. Numerous consumers have complained about these sales practices. For
16 example, California consumers who were deceived by Ygrene have taken to the
17 Internet to voice their complaints:

- 18 - I just found out that i cannot refinance my house
19 because i have one ygrene loan on my property tax.
- 20 - They lied about passing the unpaid balance onto the
21 new owners as no lender will approve a loan with a lien
22 of this type on it. The lien would be in first position
23 over a bank lien. They never disclosed the prepayment
24 penalty fee, escrow fees, payoff figure fee or statement
25 fee.
- 26 - They will tell you things like, "the loan will stay with
27 the home because it goes under the property taxes. And
28 if you sell the home, the lien just goes to the new
homeowner cause it doesn't need to be disclosed."
Wrong, they will find out about the lien once a title
company pulls the records on it. That's a great selling
point to get a lot of people. This is how we were

1 pitched. Also, we found out through our current loan
 2 process you will not be able to refinance your mortgage
 3 if you are getting a FreddieMac or FannieMae (they
 4 probably back at least 50% of the nations loans) backed
 5 loan without paying off the Ygrene/Pace "Special Tax
 6 Lien" first. It States, "Thus, in order to refinance your
 7 home loan, or for a prospective purchaser of your
 8 property to obtain a loan secured by the property, you
 9 MAY need to remove the special tax lien by prepaying
 10 the special-tax obligation in full." Why even say MAY
 11 because it absolutely has to be paid in full. I've talked
 12 with a lot of brokers and they have assured me of this.
 13 But they won't tell you this upfront. ABSOLUTELY,
 14 NONE OF THIS WAS DISCLOSED UPFRONT.

- 15 - Stay away from this financing! They told us we could
 16 refinance our home, but failed to tell us that no
 17 mortgage company would touch us after our lien was
 18 in place. You have to pay off the lien before you can
 19 refinance. Their sales people have no clue what
 20 position they put the homeowners in and don't care.
 21 This program puts the government in first position on
 22 your property and you have no recourse. This is
 23 predatory lending at its best, backed by the
 24 government. Don't do this, otherwise you are locked
 25 into your property with thousands due the city or
 26 county every year. Unless you like losing your equity
 27 for 20 years and no possible way of refinance for the
 28 same duration, then this program is for you. Don't make
 the same mistake we did. Hold out for a conventional
 loan; at least you will get better payment options and
 can sell your house easily that way with no government
 intervention. Good luck.

- They lied about passing the unpaid balance onto the
 new owners as no lender will approve a loan with a lien
 of this type on it. The lien would be in first position
 over a bank lien. They never disclosed the prepayment
 penalty fee, escrow fees, payoff figure fee or statement
 fee.

- They also put a lien against your title. Cannot sell the house without paying them off. Their website has wrong information on it - They say the loan doesn't stay with the house - it has to be paid off when you refi or sell. So much for the loan stays with house BS. Stay away from this organization.
- Do not use this financing option, or, only use it if you know you will not want to move or refinance within the time period of your loan. Ygrene LIENS your property (or rather their financial partner Willdan will do it) and if you want to sell or refinance, chances are your title company will want the liens cleared up before you do anything! So... savings? Not so much. If you try to tell the Ygrene folks that liens are not the same as Mello Roos, they argue with you. For me, it basically came down to their rep telling me that it was my title companies fault for not accepting the liens on the property. I am so sorry that I went this route and I will tell everyone I know NOT to work with this company. Oh yeah, forgot to mention that everytime you sign a contract, they place a lien on the property for the ENTIRE amount your property qualified for, not just the taxes on the amount you used. They placed 3 liens my house for over \$15,000, for 2 projects worth \$25,000. A small part of me wonders if this isn't part of their plan all along!
- The roofing company that did the work on our house was good, however Ygrene puts a lien on your home. We are refinancing our house and the lien is a real problem - it needs to be paid off in full (fine, we will use some home equity for that).¹⁹
- It was too good to be true. We did decide to sell nearly a year later. That was not supposed to be a problem. Our rep had assured us that this was transferable. Because the loan was tied to the tax payments, the new owners would be able to assume that obligation. We

¹⁹ <http://www.yelp.com/biz/ygrene-energy-fund-santa-rosa>; (last accessed on January 31, 2017).

1 were assured it was transferable. From a theoretical
 2 standpoint, I'm sure it is. You simply have to get the
 3 buyers and the buyer's lender to agree to finance the
 4 house with a lien attached. Here is a problem; no lender
 5 will finance a home that has a lien attached. None.
 6 Zilch. Zip. Nada. Lenders will not fund a mortgage for
 7 a property that has a lien on it. If you think you might
 8 sell or refinance the house before the lien is paid for,
 9 and you have a Ygrene lien, be prepared to pay off the
 lien as a part of the sales price. Also enjoy the fact that
 the interest is fully put into the cost of the project and
 you will pay off the principal and FULL interest for the
 entire length of the contract. Fun...²⁰

10 107. These unlicensed contractors use marketing materials and talking
 11 points prepared in a uniform fashion by Ygrene. Ygrene fails to adequately
 12 supervise its broad network of contractor-loan officers.

13 108. Astonishingly, Ygrene markets the *lack* of consumer disclosures as
 14 part of its sales pitch to contractors interested in becoming a Ygrene “certified”
 15 contractor:

16 15 Minute Approvals	Whether you’re applying online or sitting 17 onsite with property owner, we can provide 18 underwriting decision and finance documents in 15 minutes or less. ²¹
------------------------	--

19 109. The misrepresentations by the de facto loan agents are furthered by
 20 deceptive marketing materials designed and distributed by Ygrene, and by verbal
 21 misrepresentations that Ygrene employees make to interested consumers.

22 110. In marketing its loans to consumers, Ygrene emphasizes its
 23 “partnership” with local governments, and states that “thanks to a partnership with
 24 your local government,” it is able to bring consumers 100% financing for energy
 25 improvement projects.

26
 27 ²⁰ <https://www.yelp.com/biz/ygrene-energy-fund-sacramento>; (last accessed on January 31, 2017).

28 ²¹ www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjK8OvH1aPSAhXL8CYKHR0jDTkQFgg0MAE&url=https%3A%2F%2Fygreneworks.com%2Fwp-content%2Fuploads%2F40004-CA-8-15_prf51.pdf&usq=AFQjCNG6WiO-ZMmBy88YrSihwC_TS3E9KQ; (last accessed on February 22, 2017).

111. In a promotional video, Ygrene makes the following false statements:
If you sell your property, in some cases, payments may transfer to the new owner. So you only pay for what you use.

*It's as if your house is borrowing the money.*²²

112. In other promotional materials, Ygrene states:

Payments may stay with the property

If you sell your home, your payments may transfer to the new owner, just like your property taxes—so you only pay for improvements while you use them.²³

*

*

*

If you sell your property, payments may transfer to the new owner, just like your property taxes. (Property taxes are legally transferable when you sell your property, however, some mortgage lenders may require full repayment (payoff) of any remaining PACE special tax/assessment upon sale or refinance.)²⁴

113. Not surprisingly, Ygrene's own employees make similar misrepresentations when speaking with consumers on the telephone or in person, prior to and during the loan origination process.

114. Upon information and belief, and at all times relevant, Ygrene had corporate policies and procedures pursuant to which it instructed its employees, agents, and certified contractors to misrepresent to consumers the true nature of its PACE loans. Pursuant to these policies and procedures, Ygrene instructed its employees, agents, and certified contractors to represent to consumers that its PACE loans are always transferable at the time of sale or refinance.

²² <https://ygreneworks.com/>; (last accessed on February 3, 2017); (emphasis supplied).

²³ <https://ygreneworks.com/homeowners/>; (last accessed on February 5, 2017).

²⁴ <https://ygreneworks.com/faqs/>; (last accessed on February 5, 2017).

1 115. Under these policies and procedures, Ygrene employees, agents, and
 2 certified contractors routinely responded to consumer inquiries about the impact on
 3 the sale or refinance of a property encumbered by a Ygrene lien by stating that the
 4 lien would have no impact whatsoever.

5 116. In short, Ygrene engaged and continues to engage in a series of
 6 calculated misrepresentations and omissions, the sole purpose of which is to
 7 deceive and conceal from consumers the true implications and consequences of its
 8 PACE loans, particularly with respect to the sale or refinancing of properties
 9 encumbered by PACE loans.

10 117. Only at the very end of the deception-riddled sales process are
 11 consumers presented with written disclosures and Financing Agreements. These
 12 disclosures, like Ygrene's marketing, are also deceptive and omit key information,
 13 as discussed *infra*.

14 **Ygrene's Deceptive Written Disclosures**

15 118. Ygrene's Unanimous Approval Agreement ("UAA"), used for
 16 transactions in California, contains the following language, which further
 17 misrepresents the nature of PACE loans by saying only that: (1) "certain" lenders
 18 desire to comply with FHFA guidance (when virtually all do); (2) the FHFA
 19 "appears to have instructed" lenders not to purchase loans with attached PACE
 20 loans (when both the FHFA and other agencies repeatedly stated this fact with
 21 certainty); and (3) that "you may" need to pay off the PACE loan if a homeowner
 22 wanted to sell or refinance (when a homeowner would definitely need to do so):

23 Many banks that make home loans desire to preserve the
 24 option to sell those loans to U.S. government-sponsored
 25 enterprises (called "GSEs") that are regulated by the
 26 Federal Housing Finance Agency ("FHFA"). The FHFA
 27 *appears to have instructed* its GSEs not to purchase
 28 residential loans where there is a superior lien for
 qualifying improvements, such as the special-tax lien.
 Thus, in order to refinance your residential loan, or for a
 prospective purchaser of your property to obtain a loan

secured by the property, you *may* need to remove the special-tax lien *by prepaying the assessment obligation in full*. You thus should consider the likelihood and timing of a possible refinancing or sale of your property, and the costs to prepay the special-tax obligation, in deciding whether to annex your property to the district.

(emphasis added).

119. In sum, Ygrene’s fine print disclosure is at pains to downplay the possibility that the PACE loan will definitively create an obstacle to sale or refinance, and is especially misleading in light of the verbal representations made by Ygrene employees and Ygrene agents. It was deceptive to state that the “FHFA appears to have instructed” and that a PACE loan “may” need to be paid off when Ygrene knew, in reality, that the FHFA’s directive is unequivocal and it was virtually certain the loan would need to be paid off at the time of sale or refinance.

120. Further, the disclosure omits any reference to a prepayment penalty. Rather, it indicates that even if an involuntary prepayment is required, consumers will only have to “prepay[] the assessment obligation in full”—but does not disclose that a prepayment penalty and additional administrative and payoff fees will also be assessed.

121. Only in a *separate section* of the UAA, discussing *voluntary* repayment of the “special tax obligation,” does Ygrene mention the possibility of a prepayment penalty and additional fees—and even then it states only that such a premium “may” be assessed:

The owner may prepay the Special Tax obligation at any time by paying the then outstanding principal balance as shown on the amortization schedule provide with the Final Closing Statement, plus reasonable administrative costs and the current year’s installment of the Special Tax that appears on the property tax bill. The prepayment *may* also include a prepayment premium based upon a percentage of the remaining principal as defined in Exhibit B hereto. The Special Tax obligation may only be repaid in full.

122. The two separate disclosures reproduced above indicate to reasonable

1 consumers that, at most, a prepayment penalty may apply when a homeowner
 2 voluntarily chooses to prepay the loan—but not where he is forced to do so as a
 3 result of a sale or refinancing.

4 123. In short, Ygrene’s UAA never states that a) a homeowner will almost
 5 certainly be required to pay off the loan as a result of a sale or refinance; and b)
 6 during a sale or refinance the homeowner will also have to pay a prepayment
 7 penalty and additional administrative fees. Indeed, Ygrene’s discussion of lien
 8 satisfaction and the prepayment penalty never appear together in the UAA. That is
 9 by design; Ygrene isolates these terms in order to conceal the central fact of these
 10 loans: homeowners will almost certainly have to pay a penalty and additional fees.

11 124. Ygrene’s Agreement to Pay Assessments and Finance Qualifying
 12 Improvements (“Financing Agreement”), used in Florida, contains the following
 13 language, which, like the UAA, misrepresents the nature of PACE loans by saying
 14 only that: (1) “certain” lenders desire to comply with FHFA guidance (when
 15 virtually all do); (2) the FHFA “appears to have instructed” lenders not to purchase
 16 loans with attached PACE loans (when both the FHFA and other agencies
 17 repeatedly stated this fact with certainty); and (3) that “you may” need to pay off
 18 the PACE loan if a homeowner wanted to sell or refinance (when a homeowner
 19 would definitely need to do so):

20 Many lenders that make residential loans desire to
 21 preserve the option to sell those loans to U.S. government-
 22 sponsored enterprises (called “GSEs”) that are regulated
 23 by the Federal Housing Finance Agency (“FHFA”). The
 24 FHFA appears to have instructed its GSEs not to purchase
 25 residential loans where there is a superior lien for
 26 qualifying improvements, such as the assessment lien.
 27 Thus, in order to refinance your residential loan, or for a
 28 prospective purchaser of your property to obtain a loan
 secured by the property, you *may* need to remove the
 assessment lien by prepaying the assessment obligation in
 full. You thus should consider the likelihood and timing of
 a possible refinancing or sale of your property, and the

costs to prepay the assessment obligation, in deciding whether to participate in the program by executing this agreement. A prepayment premium *may* be applied on assessments that are paid early.

125. As with the California disclosure, the Financing Agreement minimizes the possibility that the PACE loan will definitively create an obstacle to any sale, and is especially misleading in light of the verbal representations made by Ygrene employees and Ygrene agents. It was deceptive to state that the “FHFA appears to have instructed” and that a PACE loan “may” need to be paid off when Ygrene knew, in reality, that the FHFA’s directive is unequivocal and it was virtually certain the loan would need to be paid off at the time of sale or refinance.

126. Like the UAA, the Financing Agreement, states only that a prepayment premium “may” be assessed:

The Owner may prepay the Final Assessment obligation at any time by paying the then outstanding principal balance as shown on the amortization schedule provided with the final closing statement, plus reasonable administrative costs and the current year’s installment of the Assessment that appears on the property tax bill. The prepayment may also include a prepayment premium based upon a percentage of the remaining principal as defined in Exhibit C hereto. The Final Assessment obligation may only be prepaid in full.

127. Before making these disclosures, Ygrene was on notice that the Federal Housing Finance Agency (“FHFA”), on at least three occasions since 2010, “has made clear that...Fannie Mae and Freddie Mac should neither purchase nor refinance mortgages with PACE loans attached.”²⁵

128. Ygrene did not fully disclose to Plaintiffs and Class Members that the FHFA had unequivocally instructed GSEs not to purchase loans on PACE-lien encumbered properties.

²⁵ <http://www.fhfa.gov/Media/PublicAffairs/Pages/Pollard-Statement-before-California-Legislature-Keeping-Up-with-PACE.aspx>; (last accessed on July 20, 2016).

1 129. At all times material hereto, Ygrene knew that Plaintiffs’ and the Class
2 Members’ PACE loans would almost certainly have to be satisfied before a sale of
3 the corresponding property or mortgage refinance could occur.

4 130. In some cases, as part of executing the last-minute Financing
5 Agreement, Ygrene adds the Pre-Payment Waiver Fee, without explaining to
6 consumers or providing any written explanation of the fee.

7 131. Had Plaintiffs and members of the Class known the truth about
8 Ygrene’s PACE loans and its Waiver Fee, as well as the additional administrative
9 charges, they would not have entered into these agreements.

10 **Ygrene’s Unreasonable Administrative Fees**

11 132. Adding insult to injury, for consumers forced to prepay their PACE
12 loans as a result of a sale or refinance, Ygrene assesses additional unreasonable
13 fees.

14 133. First, Ygrene requires that homeowners pay a \$125 “payoff statement
15 fee,” which is not disclosed in the UAA or Financing Agreement.

16 134. Second, it requires that homeowners pay a \$75 “administrative fee,”
17 which is not disclosed in the UAA or Financing Agreement.

18 135. Neither of these charges are remotely associated with Ygrene’s actual
19 costs to produce a payoff statement or to “administer” the payoff—and are in
20 addition to the already-excessive prepayment penalty.

21 136. Such charges are not adequately disclosed in the UAA or Financing
22 Agreement as a necessary consequence of selling or refinancing a home
23 encumbered by a Ygrene loan.

24 **Factual Allegations Specific to Plaintiffs**

25 **Lt. Joseph J. Galaska**

26 137. Plaintiff, Lt. Joseph J. Galaska, owns his primary residence located in
27 Margate, Florida. Plaintiff obtained a PACE loan through Ygrene on or about
28 January 2016.

1 138. Prior to entering into the loan agreement, Plaintiff reviewed and relied
2 upon Ygrene's website and promotional materials, all of which similarly
3 represented that Ygrene liens are transferable with the property in the event of a
4 sale or refinance.

5 139. Plaintiff also called Ygrene and spoke with a Ygrene representative.
6 Consistent with Ygrene's website and promotional materials, and its corporate
7 policies and procedures, the Ygrene representative stated that Ygrene liens are
8 always transferable with the property in the event of a sale or refinance, and that the
9 lien would have no impact on his ability to refinance or sell his home. Plaintiff
10 relied on these representations in deciding to finance his home improvement project
11 through Ygrene.

12 140. Ygrene required that Plaintiff sign a Financing Agreement, a document
13 created by Ygrene, bearing Ygrene's name and logo, and containing the following
14 deceptive disclosure:

15 The FHFA appears to have instructed its GSEs not to
16 purchase residential loans where there is a superior lien for
17 qualifying improvements, such as the assessment lien.
18 Thus, in order to refinance your residential loan, or for a
19 prospective purchaser of your property to obtain a loan
20 secured by the property, you may need to remove the
21 assessment lien by prepaying the assessment obligation in
22 full....A prepayment premium may be applied on
23 assessments that are paid early.

24 141. Ygrene's loan documents were sent to Plaintiff electronically and
25 Ygrene did not guide Plaintiff through the documents before they were executed by
26 Plaintiff.

27 142. At no point in time did Ygrene adequately disclose to Plaintiff that he
28 would almost certainly have to prepay the PACE loan should he want to sell or
refinance the property. Nor did Ygrene adequately disclose that Plaintiff would
have to pay a prepayment penalty and additional administrative fees. To the

1 contrary, Ygrene's representative assured Plaintiff that the lien would not have to be
2 satisfied in the event of a sale or refinance.

3 143. On or about January 2016, a Ygrene-certified contractor installed high-
4 impact doors and windows on Plaintiff's home.

5 144. Subsequently, Plaintiff attempted to refinance the home, but was
6 unable to do so because no lender would provide financing until Plaintiff satisfied
7 the Ygrene lien on his property, including payment of Ygrene's prepayment
8 penalty.

9 145. Based on Ygrene's misrepresentations and omissions, Plaintiff
10 understood that the Ygrene loan would not need to be satisfied at the time of sale or
11 refinance.

12 146. In obtaining a PACE loan through Ygrene, Plaintiff relied upon
13 Ygrene's omissions and deceptive representations to his detriment.

14 147. Had Plaintiff known the truth about Ygrene's loan, Plaintiff would not
15 have entered into an agreement through Ygrene and would not have agreed to the
16 prepayment penalty or administrative fees.

17 **George W. Woolley and Tammy S. Woolley**

18 148. Plaintiffs, George Woolley and Tammy Woolley, are a married couple
19 who own their primary residence in Margate, Florida. Plaintiffs obtained a PACE
20 loan through Ygrene on or about January 2016.

21 149. Prior to signing the loan agreement, Plaintiffs reviewed and relied
22 upon Ygrene's website and promotional materials, all of which similarly
23 represented that Ygrene's liens are transferable with the property in the event of a
24 sale or refinance.

25 150. Plaintiffs also called Ygrene and spoke with a Ygrene representative.
26 Consistent with Ygrene's website and promotional materials, as well as its
27 corporate policies and procedures, the Ygrene representative stated that Ygrene
28 liens are transferable with the property in the event of a sale or refinance, and that

1 the lien would have no impact on their ability to sell or refinance the property.
2 Plaintiffs relied on these representations in deciding to finance their home
3 improvement through Ygrene.

4 151. Ygrene required that Plaintiffs sign a Financing Agreement, a
5 document created by Ygrene, bearing Ygrene's name and logo, and containing the
6 following deceptive disclosure:

7 The FHFA appears to have instructed its GSEs not to
8 purchase residential loans where there is a superior lien for
9 qualifying improvements, such as the assessment lien.
10 Thus, in order to refinance your residential loan, or for a
11 prospective purchaser of your property to obtain a loan
12 secured by the property, you may need to remove the
13 assessment lien by prepaying the assessment obligation in
14 full....A prepayment premium may be applied on
15 assessments that are paid early.

16 152. The documents were sent to Plaintiffs electronically, and Ygrene did
17 not guide Plaintiffs through the documents before they were executed by Plaintiffs.

18 153. At no point in time did Ygrene adequately disclose to Plaintiffs they
19 would almost certainly have to prepay the PACE loan should they want to sell or
20 refinance the property. Nor did Ygrene adequately disclose that Plaintiffs would
21 have to pay a prepayment penalty and additional administrative fees. To the
22 contrary, Ygrene's representative assured Plaintiffs that the lien would not have to
23 be satisfied in the event of a sale or refinance.

24 154. On or about February 2016, a Ygrene-certified contractor installed a
25 new roof on Plaintiffs' home.

26 155. Subsequently, Plaintiffs attempted to refinance their home, but no
27 lender would agree to refinance unless Plaintiffs satisfied the Ygrene lien.

28 156. On or about September 2016, after months of attempting to refinance
their home, Plaintiffs were forced to satisfy the Ygrene lien at the closing of their
loan refinance, including payment of a prepayment penalty, a payoff statement fee,

1 and an administrative fee to Ygrene.

2 157. Based on Ygrene's misrepresentations and omissions, Plaintiffs
3 understood that the Ygrene loan would not need to be satisfied at the time of sale or
4 refinance.

5 158. In obtaining a PACE loan through Ygrene, Plaintiffs relied upon
6 Ygrene's omissions and deceptive representations to their detriment.

7 159. Had Plaintiffs known the truth about Ygrene's loan, Plaintiffs would
8 not have entered into an agreement through Ygrene, and would not have agreed to
9 the prepayment penalty or administrative fees.

10 **Michael G. Pikel**

11 160. On or about September 2016, Plaintiff, Michael G. Pikel, purchased a
12 single-family home in Miami-Dade County as an investment property.

13 161. The home needed a new roof, so Plaintiff contacted a roofing
14 contractor.

15 162. The contractor advised Plaintiff of the Ygrene program.

16 163. Plaintiff then reviewed and relied upon Ygrene's website and
17 promotional materials, all of which similarly represented that Ygrene liens are
18 transferable with the property in the event of a sale or refinance, in deciding to
19 participate in Ygrene's PACE program.

20 164. Plaintiff also called Ygrene and spoke with a Ygrene representative.
21 Consistent with Ygrene's website and promotional materials, as well as its policies
22 and procedures, the Ygrene representative stated that Ygrene liens are always
23 transferable with the property in the event of a sale or refinance, and that the lien
24 would have no impact on his ability to sell or refinance the home. Plaintiff relied
25 on these representations in deciding to finance his home improvement through
26 Ygrene.

27 165. Ygrene required that Plaintiff sign a Financing Agreement, a document
28 that was created by Ygrene, bearing Ygrene's name and logo, and containing the

1 following deceptive disclosure:

2 The FHFA appears to have instructed its GSEs not to
3 purchase residential loans where there is a superior lien for
4 qualifying improvements, such as the assessment lien.
5 Thus, in order to refinance your residential loan, or for a
6 prospective purchaser of your property to obtain a loan
7 secured by the property, you may need to remove the
8 assessment lien by prepaying the assessment obligation in
9 full....A prepayment premium may be applied on
10 assessments that are paid early.

11 166. The documents were sent to Plaintiff electronically, Ygrene did not
12 guide Plaintiff through the documents before they were executed by Plaintiff.

13 167. At no point in time did Ygrene adequately disclose to Plaintiff that he
14 would almost certainly have to satisfy the PACE loan if he wanted to sell or
15 refinance the property. To the contrary, Ygrene's representative assured Plaintiff
16 that the lien would not have to be satisfied at the time of sale or refinance.

17 168. On or about January 2017, a Ygrene-certified contractor installed a
18 new roof on Plaintiff's property.

19 169. Subsequently, Plaintiff attempted to sell the home, but was unable to
20 do so because no buyer could obtain financing with the Ygrene lien attached to the
21 property.

22 170. After months of attempting to sell the home, Plaintiff was forced to
23 satisfy the Ygrene lien at closing so that the purchasers' lender would approve
24 financing.

25 171. On May 9, 2017, Plaintiff closed escrow on the sale of his property.
26 Plaintiff was forced to use a portion of the sales price to satisfy Ygrene's lien,
27 including various fees paid to Ygrene such as a prepayment penalty fee, payoff
28 statement fee, and administrative fee.

 172. Based on Ygrene's misrepresentations and omissions, Plaintiff
understood that the Ygrene loan would transfer to subsequent owners of the

1 property and would not need to be satisfied at the time of sale or refinance.

2 173. In obtaining a PACE loan through Ygrene, Plaintiff relied to his
3 detriment upon Ygrene's omissions and deceptive representations.

4 174. Had Plaintiff known the truth about Ygrene's loan, Plaintiff would not
5 have entered into an agreement through Ygrene, and would not have agreed to the
6 prepayment penalty.

7 **Anthony Look, Jr., and Kimberly Look**

8 175. Plaintiffs, Anthony Look, Jr. and Kimberly Look ("Look Plaintiffs"),
9 are a married couple who purchased their single-family home in Sacramento
10 County, State of California on or about March 2015.

11 176. Plaintiffs obtained a PACE loan through Ygrene on or about August
12 2015 to finance the installation of a patio cover and concrete pad.

13 177. Prior to entering into the loan agreement, Plaintiffs reviewed and
14 relied upon Ygrene's website and promotional materials – all of which represented
15 that Ygrene's loans result in liens that are transferable with the property in the
16 event of a sale or refinance – including, but not limited to, marketing materials that
17 state as follows: "Property taxes are legally transferable upon sale, however,
18 mortgage lenders may require full repayment of the special tax upon sale or
19 refinance."

20 178. Plaintiffs also emailed and spoke with a Ygrene representative.
21 Consistent with Ygrene's website and promotional materials, as well as its
22 corporate policies and procedures, the Ygrene representative stated that Ygrene
23 liens are transferable with the property in the event of a sale or refinance, and that
24 the lien would not have any impact on their ability to sell or refinance the property.
25 Plaintiffs relied on these representations in deciding to finance their home
26 improvement through Ygrene.

27 179. Plaintiffs further inquired as to whether any prepayment penalties
28 would apply in the event they wanted to pay the loan prior to the end of its term.

1 Plaintiffs were told that a 3% penalty would apply and that financing without such
2 a penalty would raise their overall interest rate. Relying on assurances that the loan
3 was transferable with the property and that there would, therefore, not be any need
4 to satisfy the loan early, Plaintiffs opted to accept the prepayment penalty term on
5 their Ygrene loan.

6 180. Ygrene required that Plaintiffs sign a Unanimous Approval
7 Agreement, a document created by Ygrene, bearing Ygrene's name and logo, and
8 containing the following deceptive disclosure:

9 The FHFA appears to have instructed its GSEs not to
10 purchase residential loans where there is a superior lien for
11 qualifying improvements, such as the special-tax lien.
12 Thus, in order to refinance your residential loan, or for a
13 prospective purchaser of your property to obtain a loan
14 secured by the property, you may need to remove the
special-tax lien by prepaying the assessment obligation in
full.

15 181. The documents were sent to Plaintiffs electronically, and Ygrene did
16 not guide Plaintiffs through the documents before they were executed by Plaintiffs.

17 182. At no point in time did Ygrene adequately disclose to Plaintiffs that
18 they would almost certainly have to satisfy the PACE loan should they want to sell
19 or refinance their property. To the contrary, Ygrene's representative assured
20 Plaintiffs that the lien would not have to be satisfied because of a sale or refinance.

21 183. On or about April 2017, Plaintiffs attempted to refinance the mortgage
22 on their home, but they were informed that they needed to pay the PACE loan in
23 order to obtain financing because the Ygrene lien was a superior lien.

24 184. Plaintiffs were forced to satisfy the Ygrene lien, including payment of
25 a prepayment penalty, payoff statement fee, and administrative fee to Ygrene.

26 185. Based on Ygrene's misrepresentations and omissions, Plaintiffs
27 understood that the Ygrene loan would transfer to subsequent owners of the
28 property, and would not need to be satisfied at the time of sale or refinance.

186. Had Plaintiffs known the truth about Ygrene's loan, Plaintiffs would not have entered into an agreement through Ygrene, and would not have agreed to the prepayment penalty.

Grachian L. Smith and Mary Jane Smith

187. Plaintiffs, Grachian L. Smith and Mary Jane Smith, are a married couple who own their primary residence located in Hollywood, Florida. Plaintiffs obtained a PACE loan through Ygrene.

188. On or about September 2016, a roofing contractor who was repairing the roof on Plaintiffs' home told Plaintiffs that the Ygrene program offered various advantages. The roofing contractor informed Plaintiffs that they would be able to replace the windows on their home with no money down.

189. Ultimately, Ygrene referred Plaintiffs to Florida Home Improvement Associates, Inc., a Ygrene "certified" contractor.

190. This Ygrene-certified contractor told Plaintiffs that Ygrene's loans are always transferable at the time of refinance or sale. Plaintiffs relied on these representations in deciding to finance their home improvement through Ygrene.

191. Ygrene required that Plaintiffs sign a Financing Agreement, a document created by Ygrene, bearing Ygrene's name and logo, and containing the following deceptive disclosure:

The FHFA appears to have instructed its GSEs not to purchase residential loans where there is a superior lien for qualifying improvements, such as the assessment lien. Thus, in order to refinance your residential loan, or for a prospective purchaser of your property to obtain a loan secured by the property, you may need to remove the assessment lien by prepaying the assessment obligation in full....A prepayment premium may be applied on assessments that are paid early.

192. The documents were sent to Plaintiffs electronically, and Ygrene did not guide Plaintiffs through the documents before they were executed by Plaintiffs.

193. At no point in time did Ygrene adequately disclose to Plaintiffs that

1 they would almost certainly have prepay their PACE loan and pay additional fees
2 should they wish to refinance or sell their home.

3 194. Plaintiffs were charged a Pre-Payment Waiver Fee of \$221.34 without
4 explanation. Plaintiffs did not agree to this fee, which should not have been charged
5 by Ygrene if its representations that the PACE loans transfer with the properties
6 were true.

7 195. In obtaining a PACE loan through Ygrene, Plaintiffs relied upon
8 Ygrene's omissions and deceptive representations to their detriment.

9 196. Based on Ygrene's misrepresentations and omissions, Plaintiffs
10 understood that their Ygrene loan would transfer to subsequent owners of their
11 home.

12 197. Had Plaintiffs known the truth about Ygrene's loan program, Plaintiffs
13 would not have entered into an agreement through Ygrene, and would not have
14 agreed to payment of the Pre-Payment Waiver Fee.

15 **Alejandro Marcey and Felicia Marcey**

16 198. Plaintiffs, Alejandro Marcey and Felicia Marcey, are a married couple
17 who own their primary residence located in Chula Vista, California. Plaintiffs
18 obtained a PACE loan through Ygrene.

19 199. In approximately October 2015, a Ygrene-certified contractor visited
20 Plaintiffs' home to provide Plaintiffs with an estimate for a roof replacement and
21 new windows, and then told Plaintiffs about various advantages offered by the
22 Ygrene program.

23 200. During this initial consultation, the Ygrene-certified contractor
24 represented to Plaintiffs that Ygrene's loans are always transferable at the time of
25 refinance or sale. Plaintiffs relied on these representations in deciding to finance
26 their home improvement through Ygrene.

27 201. Prior to entering into the PACE loan, Plaintiffs reviewed Ygrene's
28 website and marketing materials, which included the following false claim: "If the

1 property is sold, the tax assessment moves with the sale to the new owner.”
2 Plaintiffs also relied on these representations in deciding to finance their home
3 improvement through Ygrene.

4 202. Ygrene required that Plaintiffs sign a Unanimous Approval
5 Agreement, a document created by Ygrene, bearing Ygrene’s name and logo, and
6 containing the following deceptive disclosure:

7 The FHFA appears to have instructed its GSEs not to
8 purchase home loans where there is a superior lien for
9 clean-energy improvements, such as the special-tax lien.
10 Thus, in order to refinance your home loan, or for a
11 prospective purchaser of your property to obtain a loan
12 secured by the property, you may need to remove the
special-tax lien by prepaying the special-tax obligation in
full.

13 203. In obtaining a PACE loan through Ygrene, Plaintiffs relied upon
14 Ygrene’s omissions and deceptive representations to their detriment.

15 204. Based on Ygrene’s misrepresentations and omissions, Plaintiffs
16 understood that their Ygrene loan would transfer to subsequent owners of their
17 home—and that they would not have to prepay the loan or incur a prepayment
18 penalty.

19 205. Had Plaintiffs known the truth about Ygrene’s loan, Plaintiffs would
20 not have entered into an agreement through Ygrene.

21 206. Plaintiffs attempted to refinance in April 2016. They were met with the
22 unexpected news that they would not be able to refinance without fully satisfying
23 the loan and paying a prepayment penalty—something they could not afford to do.

24 207. After speaking with several lenders, they were forced to accept an
25 FHA loan with unfavorable terms, on the condition that they take out extra
26 mortgage insurance. Plaintiffs did so, at an out-of-pocket cost of \$267/month.

27 **CLASS ACTION ALLEGATIONS**

28 208. Plaintiffs bring this case as a class action pursuant to Fed. R. Civ. P.

23 on behalf of themselves and all others similarly situated.

209. Plaintiffs bring this case on behalf of the following Classes under Fed. R. Civ. P. 23(b)(2):

Nationwide Prepayment Penalty Class

All persons within the United States who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty.

California Prepayment Penalty Subclass

All persons within the State of California who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty.

Florida Prepayment Penalty Subclass

All persons within the State of Florida who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty.

Nationwide Prepayment Waiver Fee Class—Not Yet Paid

All persons within the United States who, within the four (4) years prior to the filing of this Complaint, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty and/or where Ygrene assessed a Prepayment Waiver Fee.

California Prepayment Waiver Fee Subclass—Not Yet Paid

All persons within the State of California who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty and/or where Ygrene assessed a Prepayment Waiver Fee.

Florida Prepayment Waiver Fee Subclass—Not Yet Paid

All persons within the State of Florida who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, where the loan contained a provision for a prepayment penalty and/or where Ygrene assessed a Prepayment Waiver Fee.

210. Plaintiffs bring this case on behalf of the following Classes under Fed. R. Civ. P. 23(b)(3):

Nationwide Prepayment Penalty Class—Paid

All persons within the United States who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid a prepayment penalty.

California Prepayment Penalty Subclass—Paid

All persons within the State of California who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid a prepayment penalty.

Florida Prepayment Penalty Subclass—Paid

All persons within the State of Florida who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid a prepayment penalty.

Nationwide Payoff and Administrative Fee Class

All persons within the United States who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid an administrative fee and/or payoff statement fee.

California Payoff and Administrative Fee Subclass

All persons within the State of California who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid an administrative fee and/or payoff statement fee.

Florida Payoff and Administrative Fee Subclass

All persons within the State of Florida who, within the four (4) years prior to the filing of this action, entered into a PACE financing loan agreement originated and/or facilitated by Ygrene in connection with their primary residence, and who paid an administrative fee and/or payoff statement fee.

211. Excluded from the Classes are Defendants, their affiliates, personnel, agents and members of the Judiciary. Plaintiffs reserve the right to amend the class definition upon completion of class certification discovery.

212. **Numerosity:** Plaintiffs are informed and believe, and upon such

information and belief aver, that the number of persons in the Classes are so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and upon such information and belief avers, that the number of class members is in the thousands. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery.

213. **Commonality:** There are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual members. The common questions in this case are capable of having common answers. If Plaintiffs' claims regarding Defendants' conduct is accurate, Plaintiffs and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case. Among the questions of law and fact common to the Classes are:

- a. Whether Defendants engaged in unlawful, unfair and/or fraudulent business acts or practices likely to deceive Plaintiffs and Class Members;
- b. Whether Defendants intentionally concealed, omitted and/or otherwise failed to disclose material information to Plaintiffs and Class Members;
- c. Whether Defendants failed to disclose to Plaintiffs and Class Members that they would be unable to refinance or sell their homes without first satisfying their PACE loans and incurring a pre-payment penalty, and payoff and administrative fees;
- d. Whether Defendants failed to disclose to Plaintiffs and Class Members that they would be charged an unnecessary Pre-Payment Waiver Fee;
- e. Whether Defendants had a duty to disclose the undisclosed material facts to Plaintiffs and Class Members;
- f. Whether Plaintiffs and Class Members have sustained damages as a result of the conduct alleged herein and, if so, what is the proper measure of such damages; and

1 g. Whether Plaintiffs and Class Members are entitled to injunctive and
2 other equitable relief.

3 214. **Typicality:** Plaintiffs' claims are typical of the claims of the Class
4 members, as they are all based on the same factual and legal theories, and similar
5 loan documents and disclosures.

6 215. **Adequacy:** Plaintiffs are representatives that will fully and adequately
7 assert and protect the interests of the Classes, and have retained competent counsel.
8 Accordingly, Plaintiffs are adequate representatives and will fairly and adequately
9 protect the interests of the Classes.

10 216. **Predominance and Superiority:** A class action is superior to all
11 other available methods for the fair and efficient adjudication of this lawsuit,
12 because individual litigation of the claims of all members of the Classes is
13 economically unfeasible and procedurally impracticable. While the aggregate
14 damages sustained by Class Members are in the millions of dollars, the individual
15 damages incurred by each member resulting from Defendants' wrongful conduct
16 are too small to warrant the expense of individual lawsuits. The likelihood of
17 individual Class Members prosecuting their own separate claims is remote, and,
18 even if every member of the Class could afford individual litigation, the court
19 system would be unduly burdened by individual litigation of such cases. The
20 prosecution of separate actions by Class Members would create a risk of
21 establishing inconsistent rulings and/or incompatible standards of conduct for
22 Defendants. For example, one court might enjoin Defendants from performing the
23 challenged acts, whereas another may not. Additionally, individual actions may be
24 dispositive of the interests of the Classes, although certain class members are not
25 parties to such actions.

26 //

27 //

28 //

FIRST CAUSE OF ACTION
VIOLATION OF THE “UNFAIR” PRONG OF CAL. BUS. & PROF. CODE
§ 17200, *et seq.* AGAINST YGRENE ENERGY FUND, INC
(California Subclass)

217. Plaintiffs incorporate and reallege by reference each and every allegation contained in paragraphs 1-216 as if fully set forth herein.

218. California’s Business & Professions Code § 17200, *et seq.* (the “UCL”), defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Pro. Code § 17200.

219. A business act or practice is “unfair” under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

220. Defendant violated the “unfair” prong of the UCL through its affirmative misrepresentations, omissions, and practices described herein.

221. The gravity of the harm to Plaintiffs and Class Members resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives of Defendant for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Defendant engaged in unfair business practices within the meaning of California Business & Professions Code § 17200, *et seq.*

222. Through its unfair acts and practices, Defendant has improperly obtained money from Plaintiffs and Class Members. As such, Plaintiffs request that this Court cause Defendant to restore this money to Plaintiffs and all Class Members, and to enjoin Defendant from continuing to violate the UCL as discussed herein and/or from violating the UCL in the future. Otherwise, Plaintiffs and Class Members may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

223. Plaintiffs and Class Members demand the applicable relief set forth in

1 the Prayer for Relief below.

2
3 **SECOND CAUSE OF ACTION**
4 **VIOLATION OF THE “FRAUDULENT” PRONG OF CAL. BUS. & PROF.**
5 **CODE § 17200, *et seq.* AGAINST YGRENE ENERGY FUND, INC**
6 **(California Subclass)**

7 224. Plaintiffs incorporate and reallege by reference each and every
8 allegation contained in paragraphs 1-216 as if fully set forth herein.

9 225. The UCL defines unfair business competition to include any “unlawful,
10 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
11 misleading” advertising. Cal. Bus. & Pro. Code § 17200.

12 226. A business act or practice is “fraudulent” under the UCL if it is likely
13 to deceive members of the consuming public.

14 227. Defendant’s representations and omissions as described herein were
15 fraudulent within the meaning of the UCL because they deceived Plaintiffs, and were
16 likely to deceive Class Members.

17 228. Defendant’s acts and practices as described herein have deceived
18 Plaintiffs and were highly likely to deceive members of the consuming public.

19 229. As a result of the conduct described above, Defendant has been unjustly
20 enriched at the expense of Plaintiffs and Class Members. Specifically, Defendant
21 has been unjustly enriched by obtaining revenue and profits that it would not
22 otherwise have obtained absent its false, misleading and deceptive conduct.

23 230. Through its unfair acts and practices, Defendant has improperly
24 obtained money from Plaintiffs and Class Members. As such, Plaintiffs request that
25 this court cause Defendant to restore this money to Plaintiffs and all Class Members,
26 and to enjoin Defendant from continuing to violate the UCL as discussed herein
27 and/or from violating the UCL in the future. Otherwise, Plaintiffs and Class
28 Members may be irreparably harmed and/or denied an effective and complete
remedy if such an order is not granted.

231. Plaintiffs and Class Members demand the applicable relief set forth in the Prayer for Relief below.

THIRD CAUSE OF ACTION
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT AGAINST
YGRENE ENERGY FUND, INC.
(California Subclass)

232. Plaintiffs incorporate and reallege by reference each and every allegation contained in paragraphs 1-216 as if fully set forth herein.

233. Plaintiffs and Class Members are “consumers” within the meaning of California Civil Code §§ 1761(d) and 1770.

234. Defendant’s provision of PACE financing were “transactions” within the meaning of Cal. Civ. Code § 1761(e).

235. As described herein, Defendant violated the CLRA by making deceptive representations in connection with the PACE loans in question (1770(a)(5)); by representing that its PACE loans have characteristics which they do not have (1770)(a)(5) and (14)); and by inserting unconscionable provisions in its contracts (1770)(a)(19).

236. Plaintiffs relied on Defendant’s false representations.

237. Counsel for Plaintiffs will provide proper notice of their intent to pursue claims under the CLRA and an opportunity to cure to Defendant via certified mail.

238. Plaintiffs request this Court enjoin Defendant from continuing to violate the CLRA as discussed herein and/or from violating the UCL in the future and to order restitution to Plaintiffs and Class Members. Otherwise, Plaintiffs, Class Members, and members of the general public may be irreparably harmed and/or denied effective and complete remedy if such an order is not granted.

239. If Defendant declines to address the CLRA violations and associated harm Plaintiffs outline in their notice letter within thirty (30) days, Plaintiffs will amend their Complaint pursuant to Cal. Civ. Code §§ 1782(b) and (d) to seek actual

1 and punitive damages, in addition to restitution, injunctive relief, and any other relief
2 the Court deems proper.

3 240. Plaintiffs and Class Members demand the applicable relief set forth in
4 the Prayer for Relief below.

5 **FOURTH CAUSE OF ACTION**
6 **VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE**
7 **PRACTICES ACT**
8 (Florida Subclass)

9 241. Plaintiffs incorporate and reallege by reference each and every
10 allegation contained in paragraphs 1-216 as if fully set forth herein.

11 242. Plaintiffs assert this cause of action on behalf of themselves and Class
12 Members.

13 243. Plaintiffs and Class Members are “consumers” as defined by Florida
14 Statute § 501.203(7), and the subject PACE loan transactions are “trade or
15 commerce” as defined by Florida Statute §501.203(8).

16 244. FDUTPA was enacted to protect the consuming public and legitimate
17 business enterprises from those who engage in unfair methods of competition, or
18 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or
19 commerce.

20 245. Defendants violated and continue to violate FDUTPA by engaging in
21 the unconscionable, deceptive, unfair acts or practices described herein and
22 proscribed by Florida Statute §501.201, *et seq.* Defendants’ affirmative
23 misrepresentations, omissions, and practices described herein were likely to, and did
24 in fact, deceive and mislead members of the public, including consumers acting
25 reasonably under the circumstances, to their detriment.

26 246. Defendants’ actions constitute unconscionable, deceptive, or unfair acts
27 or practices because, as alleged herein, Defendants engaged in deceptive conduct by
28 misrepresenting and omitting material facts regarding its PACE loans, thereby

1 offending an established public policy, and engaging in immoral, unethical,
2 oppressive, and unscrupulous activities that are substantially injurious to consumers.

3 247. Defendants violated FDUTPA by engaging in unfair and deceptive
4 practices, which offend public policies and are immoral, unethical, unscrupulous and
5 substantially injurious to consumers.

6 248. Defendants' marketing and written disclosures with respect to its PACE
7 loans are inherently deceptive and unfair and are, therefore, a practice that is in
8 violation of FDUTPA.

9 249. As a direct and proximate result of Defendants' deceptive practices,
10 Plaintiffs and Members of the Class participated in Ygrene's loan programs, and
11 they would not have done so had they known the truth about Ygrene's PACE loans.

12 250. FDUTPA specifically provides for injunctive relief relating to alleged
13 unfair and deceptive trade practices. Without an injunction preventing Defendants
14 from continuing to mislead consumers, Plaintiffs and Class Members will continue
15 to suffer damages.

16 251. Pursuant to Florida Statute § 501.211(1), Plaintiffs seek a declaration
17 that Defendants' deceptive conduct has violated and continues to violate FDUTPA,
18 and seek injunctive relief regarding Defendants' past and continuing deceptive
19 conduct. Plaintiffs reserve the right to allege other violations of FDUTPA as
20 Defendants' conduct is ongoing.

21 252. In addition, pursuant to Florida Statutes §501.211, Plaintiffs and Class
22 Members seek equitable relief and to enjoin Defendants on terms that the Court
23 considers reasonable. Plaintiffs also seek reasonable attorneys' fees and costs, as
24 well as statutory damages as prescribed by §§ 501.211(2) and 501.2075.

25 253. Plaintiffs and Class Members demand the applicable relief set forth in
26 the Prayer for Relief below.
27
28

FIFTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT
(Nationwide Class)

254. Plaintiffs incorporate and reallege by reference each and every allegation contained in paragraphs 1-216 as if fully set forth herein.

255. Plaintiffs entered into PACE loan agreements with various special districts as alleged herein.

256. At all times, Defendants were aware of the existence of these PACE loan agreements between, on the one hand, Plaintiffs and the class members and, on the other, the special districts.

257. Defendants tortiously interfered with these contractual relationships and prevented Plaintiffs and the class members from obtaining the full benefits of their contractual relationship with the special districts.

258. The UAA and Financing Agreements nowhere authorize Defendants to charge excessive and unreasonable administrative fees and prepayment penalties.

259. Defendants imposed unreasonable penalties and fees on Plaintiffs and members of the class.

260. Therefore, Defendants tortiously interfered with the performance of Plaintiffs' and the class members PACE loan agreements.

261. Defendants' tortious interference has resulted in an actual breach of Plaintiffs' and the class members' contracts because Plaintiffs and the class members have been assessed fees and penalties not authorized by the UAA and Financing Agreements.

262. As a direct, proximate, and foreseeable result of Defendants' tortious interference with Plaintiffs and the class members' contracts, Plaintiffs and the class members have been legally injured and sustained damages by not receiving the full benefit of their contractual bargain.

263. Plaintiffs and the class members have performed all, or substantially

1 all, of the obligations imposed on them under the UAA and Financing Agreements.

2 264. As a direct result of Defendant's breaches, Plaintiffs and members of
3 the Class have sustained economic losses and are entitled to compensatory damages
4 in an amount to be proven at trial.

5
6 **SIXTH CAUSE OF ACTION**
7 **FRAUDULENT INDUCEMENT**
(Nationwide Class)

8 265. Plaintiffs incorporate and reallege by reference each and every
9 allegation contained in paragraphs 1-216 as if fully set forth herein.

10 266. Defendants had a duty to make full and adequate disclosures to
11 Plaintiffs and Class Members regarding the nature of its loans, as well as all
12 associated penalties and fees.

13 267. Defendants made materially false statements and omissions regarding
14 its PACE loans to Plaintiffs and Class Members.

15 268. These facts constitute material information that Plaintiffs and the Class
16 Members would have deemed material when deciding whether to purchase the loan
17 products at issue.

18 269. In situations where Defendants made some disclosures, Defendants
19 made only partial representations while suppressing material facts, as alleged herein.

20 270. Defendants' concealment, omissions, and partial representations
21 occurred prior to the consummation of the loan transactions with Plaintiffs and the
22 Class Members and are continued in the terms of the loan documents.

23 271. Had Defendants disclosed this information, Plaintiffs and the Class
24 Members would not have agreed to the subject PACE loans on these terms.

25 272. At all relevant times, Defendants actively concealed and suppressed
26 these material facts from Plaintiffs and Class Members. Defendants had superior
27 knowledge of the concealed facts.
28

1 273. Defendants had knowledge that their materially false statements and
2 omissions regarding its PACE loans were false when made.

3 274. In making materially false statements and omissions regarding the
4 PACE loans, it was Defendants' intention to induce Plaintiffs and Class Members to
5 rely on the materially false statements and omissions to enter into the subject PACE
6 loans.

7 275. In entering into the subject PACE loans, Plaintiffs and Class Members
8 reasonably relied and acted upon the materially false statements and omissions made
9 by Defendants.

10 276. Plaintiffs and Class Members have suffered damages as a result of their
11 reasonable reliance upon Defendants' materially false statements and omissions set
12 forth above.

13 277. As a direct and proximate result of Defendants' intentional omissions
14 and misrepresentations of material fact, as alleged herein, Plaintiffs and Class
15 Members have suffered damages.

16 278. Plaintiffs and Class Members demand the applicable relief set forth in
17 the Prayer for Relief below.

18
19 **SEVENTH CAUSE OF ACTION**
20 **NEGLIGENT MISREPRESENTATION**
 (Nationwide Class)

21 279. Plaintiffs incorporate and reallege by reference each and every
22 allegation contained in paragraphs 1-216 as if fully set forth herein.

23 280. Defendants had a duty to Plaintiffs and Class Members to fully disclose
24 the true nature of its loan products, as well as all associated penalties and fees.

25 281. Defendants breached their duty and were negligent to Plaintiffs and
26 Class Members by failing to clearly and adequately advise Plaintiffs and Class
27 Members of all material information regarding its loan products.
28

1 282. Defendants knew or should have known that its wrongful acts and
2 omissions would cause damages to Plaintiffs and Class Members

3 283. Defendants' conduct has directly and proximately caused damage to
4 Plaintiff and Class Members.

5 284. Plaintiffs and Class Members demand the applicable relief set forth in
6 the Prayer for Relief below.

7
8 **EIGHTH CAUSE OF ACTION**
9 **UNJUST ENRICHMENT**
 (Nationwide Class)

10 285. Plaintiffs incorporate and reallege by reference each and every
11 allegation contained in paragraphs 1-216 as if fully set forth herein.

12 286. Plaintiffs and Class Members conferred a benefit upon Defendants in
13 the form of various origination and closing fees, prepayment fees, administrative
14 fees, and other fees and payments.

15 287. Defendants had knowledge of the benefits conferred upon them by
16 Plaintiffs and Class Members.

17 288. Defendants voluntarily accepted and retained the benefits conferred
18 upon them by Plaintiffs and Class Members.

19 289. Under the circumstances, it would be inequitable for Defendants to
20 retain the benefit conferred upon them by Plaintiffs and Class Members.

21 290. Defendants have been unjustly enriched and are required to refund
22 Plaintiffs and Class Members the benefits they conferred upon Defendants.

23 291. Plaintiffs and Class Members demand the applicable relief set forth in
24 the Prayer for Relief below.

25
26 **NINTH CAUSE OF ACTION**
27 **NEGLIGENCE**
 (Nationwide Class)

28 292. Plaintiffs incorporate and reallege by reference each and every

1 allegation contained in paragraphs 1-216 as if fully set forth herein.

2 293. Defendants had a duty to fully disclose to Plaintiffs and Class Members
3 the true nature of its loan products, as well as all associated penalties and fees.

4 294. Defendants breached their duty by failing to provide adequate
5 disclosures to Plaintiffs and Class Members.

6 295. Defendants knew or should have known that their wrongful acts and
7 omissions would cause damage to Plaintiffs and Class Members.

8 296. Defendants' conduct has directly and proximately caused damages to
9 Plaintiffs and Class Members.

10 297. Plaintiffs and Class Members demand the applicable relief set forth in
11 the Prayer for Relief below.

12
13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs and the Class respectfully request the following
15 and pray for judgment as follows:

16 1. For a declaration that this lawsuit may properly be maintained as a
17 class action and certifying the Class claims herein;

18 2. Award Plaintiffs and Class Members injunctive relief in the form of a
19 promise not to charge prepayment penalties; a promise not to charge unauthorized
20 administrative fees; and that Ygrene adopt the practice of providing adequate
21 disclosures.

22 3. Award Plaintiffs and Class Members damages flowing from the
23 requested injunction;

24 4. Appoint the undersigned as Class Counsel;

25 5. Appoint Plaintiffs as Representatives of the Class;

26 6. Award other declaratory and injunctive relief as permitted by law;

27 7. Award reasonable attorneys' fees, filing fees, expert fees, and costs of
28 suit to counsel based upon the benefit received by Plaintiffs and Class;

8. Award Plaintiffs and Class Members actual damages;
9. Award Plaintiffs and Class Members attorneys' fees and all litigation costs; and
10. Award Plaintiffs and Class Members any further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the Class, hereby demand a jury trial for all issues so triable.

Dated: May 16, 2017

KASDAN LIPPSMITH WEBER TURNER LLP

By: /s/ Graham B. LippSmith
GRAHAM B. LIPPSMITH
JACLYN L. ANDERSON

TYCKO & ZAVAREEI LLP
JEFFREY D. KALIEL

HIRALDO P.A.
MANUEL S. HIRALDO

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2017, I electronically filed the **AMENDED COMPLAINT FOR DAMAGES** with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system to receive service.

/s/ Graham B. LippSmith

Graham B. LippSmith